



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 39

SALE PRICE UPON WHICH TAX IS BASED

This bulletin is intended solely as advice to assist persons in determining and complying with their obligations under Maine tax law. It is written in a relatively informal style and is intended to address issues commonly faced by taxpayers with respect to determining the sale price upon which tax is based. Taxpayers are responsible for complying with all applicable tax statutes and rules. Although bulletins issued by Maine Revenue Services (“MRS”) do not have the same legal force and effect as rules, justifiable reliance upon this bulletin will be considered in mitigation of any penalties for any underpayment of tax due. This bulletin is current as of the last revision date shown at the end of the document.

The Sales and Use Tax Law is found in Part 3 of MRSA (“Maine Revised Statutes Annotated”) Title 36. Both Title 36 and all MRS rules may be seen by clicking on “laws and rules” at the top of the MRS website.

Section 1811 of the Sales and Use Tax Law imposes a sales tax on the value of tangible personal property and taxable services sold at retail in this State. Value is measured by the sale price. Section 1861 imposes a use tax on purchases at retail sale where sales tax is not paid at the time of purchase. The amount of tax is determined by applying the tax rate to the sale price. Section 1752, subsection 14 defines the meaning of “sale price.”

This bulletin explains what must be included in the sale price on which sales or use tax liability is based.

1. IN GENERAL

A. The sale price on which sales tax is based includes: (See § 1752, sub-§ 14(A))

- (1) The full price, valued in money, whether paid in money or otherwise, including the value of traded in property.
- (2) The amount charged for any services that are a part of the sale, such as assembly, alteration or fabrication charges whether separately stated or not. (See Section 4 below). Separately stated charges for labor or services used in installing, applying or repairing the property sold are not subject to tax.
- (3) Federal manufacturers’ or importers’ excise taxes with respect to automobiles, tires, fire arms, tobacco, liquor, sporting goods, etc., even though this federal tax is separately stated.

B. The sale price on which sales tax is based does *not* include: (See § 1752, sub-§ 14(B))

- (1) Cash discounts allowed by the seller and taken by the purchaser.
- (2) Separately stated charges for labor or services involved in installing, applying or repairing the property sold.
- (3) Separately stated charges for transportation of goods to the purchaser by common carrier, contract carrier, or U.S. mail.
- (4) Certain service charges imposed in lieu of tips.
- (5) The Recycling Assistance Fee imposed by Title 36 section 4832, subsection 1 (See Instructional Bulletin 48 for more information).
- (6) The premium on motor vehicle oil imposed by Title 10 MRSA, section 1020, subsection 6-A.
- (7) The lead-acid battery deposit imposed by Title 38, section 1604, subsection 2-B.
- (8) The fees imposed for the “lemon law” arbitration program and consumer mediation service by Title 10, section 1169, subsection 11.
- (9) Any amount charged for the disposal of used tires.

C. Partial or full credit may be taken by a retailer for transactions previously reported as taxable if:

- (1) A refund or credit is allowed the purchaser pursuant to warranty.
- (2) The full purchase price is refunded to the purchaser upon return of the merchandise.

2. TRADE-INS, CORE CHARGES AND INSTALLMENT SALES

Pursuant to the definition of “sale price,” tax applies not only to cash sales, but also to credit sales, and to transactions where the sale price is paid in part or in whole by barter, rendition of services, or any other valuable consideration.

A. Trade-ins. When property is sold, with an allowance being made for traded-in property, tax applies to the entire sale price, including the allowance for trade-in. Thus, if a refrigerator is sold for \$800, the customer paying \$700 in cash and \$100 by way of allowance on a traded in refrigerator, tax is based on the full price of \$800.

However, § 1765 of the law provides an exception to this rule. When one of the following items is traded-in toward the sale price of another of the same kind, the allowance for the trade-in is deducted from the sale price in computing the tax: motor vehicles, watercraft, aircraft, chain saws, special mobile equipment, trailers and truck campers. For information on trade-in allowances, see Instructional Bulletin #24, “Vehicle Dealers.”

B. Core Charges. Customers who purchase property that can be reconditioned and resold by the seller are sometimes encouraged to bring their used property to the seller by the imposition of a “core charge” on the original purchase, which may then be refunded or credited to the customer when the used property is brought back to the seller. The core

charge is considered part of the sale price of the new property being purchased and is subject to the sales tax. For instance, an alternator may be sold for \$80.00 with a core charge being stated in the amount of \$10.00. The total sale price subject to tax is \$90.00. If a used alternator is traded-in at the same time as the purchase of the new alternator, the sale price subject to tax remains at \$90.00 even though a \$10.00 credit is allowed by the seller. If the used alternator is returned to the seller at a later date and the customer is refunded the \$10.00 core charge, no refund of sales tax is allowed. The definition of “sale price” does not exclude an allowance of this sort and core charges do not qualify for trade-in credits.

C. Installment and layaway sales. A sale is not treated as having been completed until delivery is made (even if full payment has not been made at that time). With an installment sale, the property is delivered to the customer, and then the customer makes payment over time. Sales tax must therefore be collected in full when delivery is made.

In the layaway sale context, where the property has not yet been delivered to the purchaser, a layaway payment is just a deposit, so tax is not collected each time a payment is made. The sale price includes the total amount of all layaway payments, but sales tax is not collected until the final payment is made and the property is delivered to the purchaser.

3. CASH DISCOUNTS

The law provides that “discounts allowed and taken on sales” are not included in the “sale price.” (See § 1752, sub-§ 14(B-1)) Thus, if a 2% allowance is made for payment within a stated time, **and this allowance or discount is actually taken by the customer**, tax applies to the stated price less the discount, or the amount actually paid.

For example: Two customers purchase \$100 worth of taxable goods, with 2% being allowed for prompt payment. Customer A pays promptly and thus takes the 2% discount: tax is based upon a sale price of \$98. Customer B does not pay promptly and does not take the 2% discount: tax is based upon a sale price of \$100.

If interest is charged on overdue accounts, tax does **not** apply to the interest charged.

A. Coupons. If a retailer issues a store coupon that reduces the amount received by the retailer, the value of the coupon is a seller's discount that is deducted from the sale price before computing the sales tax. However, a coupon issued by a manufacturer is not a seller's discount. In the case of a manufacturer's coupon, tax is based on the full sale price.

B. Rebates. Rebates provided by manufacturers to purchasers of tangible personal property are not discounts allowed between the seller and the purchaser. Sales tax is computed on the total sale price without any deduction for the manufacturer's rebate. The fact that the rebate is assigned by the purchaser to the seller does not change this result.

For more information on coupons and rebates, see Instructional Bulletin #25 ("Coupons and Gifts").

4. SERVICE CHARGES THAT ARE A PART OF THE SALE PRICE

The definition of "sale price" includes "any consideration for services that are a part of a retail sale." (See § 1752, sub-§ 14(A-1)) However, it excludes the "price received for labor or services used in installing or applying or repairing the property sold, if separately charged or stated." In other words, the sales tax normally applies to the full charge for the goods sold, **including any charges for services that are a part of the sale**, except for separately stated charges for installing, applying, or repairing the property sold. For example, if a caterer prepares and serves food for a reception, the caterer's charge covers not only the cost of the food, but also the cost of preparation and service. Tax applies to the entire charge, since preparing and serving the food are services that are part of the sale. Even though the charges for preparation and serving are separately stated, tax still applies to these charges, since they are not charges for "installing, applying, or repairing the property sold."

A. Alteration Charges. When a merchant offers goods for sale, and alters them to the customer's requirements, the charges for such alterations are part of the sale price on which tax is based, whether separately stated or not. For example, a customer selects a coat. However, certain alterations are necessary before the coat is satisfactory as a piece of wearing apparel for the customer. The merchant or someone contracted by the merchant performs the alterations and charges the customer an additional \$10 alteration fee. The alteration charges will be considered a part of the sale price upon which tax is based, even though such charges are separately stated.

B. Assembly Charges. Some types of furniture and equipment are sold either on a knocked down, or unfinished, or on an assembled, or finished basis; the assembled or finished item being priced correspondingly higher. Charges for assembling or finishing, in such cases, are part of the taxable sale price, whether separately stated or not.

C. Delivery Charges. A cash on delivery ("COD") charge constitutes payment for the service of collecting the purchase price from the purchaser. Handling charges, mileage charges, "wait charges," and fuel surcharges are services that are associated with a sale. All of these charges are therefore included in the taxable sale price, whether separately stated or not.

5. OTHER CHARGES EXCLUDED FROM SALE PRICE

The definition of “sale price” excludes the following charges:

A. Charges for Installing, Applying, or Repairing the Property Sold, if Separately Stated. Such charges, if separately stated, are **not** part of the taxable “sale price.” (See § 1752, sub-§ 14(B-4)) For example, completed drapes are sold by a merchant, who also installs them at the home of the customer. Sales tax applies to the full charge for the drapes, including the charge for any hardware or other tangible personal property involved in the transaction. The installation charges, however, if separately stated, are **not** part of the taxable sale price.

When a customer brings in a piece of furniture to be stained or painted, the merchant should charge tax on the price of the paint or stain, but not on the charge for applying the paint or stain, if separately stated. Note that this differs from the situation where the customer picks out the piece of furniture from the dealer’s stock and wants it painted or stained, in which case the total charge is taxable.

In all the above cases, exclusion of the service charges from the tax base depends on such charges being separately stated. While it is usually preferable that such charges be separately stated on the invoice to the customer, this is not essential. There must, however, be a separate statement of such charges on record somewhere, either on the statement to the customer or in the records of the retailer.

B. Transportation Charges. Transportation charges are not included in the taxable “sale price” if: (See § 1752, sub-§ 14(B-7))

- (1) The transportation in question is from the retailer’s place of business, or some other point from which shipment is made, directly to the customer; and
- (2) The transportation is by means of common carrier, contract carrier or the United States mails; and
- (3) The transportation charges are separately stated. (As noted above, such charges need not be separately stated on the invoice, provided a separate statement is otherwise available in the records of the seller or purchaser).

All three of the above conditions must be met for transportation charges to be excludible. For example, charges for transportation from the point of manufacture to the seller are not excludible. Charges for transportation from the seller to the purchaser are likewise not excludible if the seller delivers the goods in the seller’s own vehicle rather than shipping them by common or contract carrier or mail.

A cash on delivery (“COD”) charge is not a transportation charge (see Section 4C above). Handling charges, mileage charges, “wait charges” and fuel surcharges also do not qualify as transportation charges and are therefore included in the sale price and subject to sales tax.

A charge for delivery by the seller in its own vehicle is included in the taxable sale price if the products being sold and delivered are taxable items. If the delivery involves both taxable and exempt components (for example, a restaurant buying both food and supplies) delivery charges may be partially exempted from tax by applying a proration;

however, if 10% or fewer of the items in question are taxable, the taxable portion of the transaction is considered *de minimis* and the transportation charges are excludible from the sale price.

For more information, see Instruction Bulletin No. 30 (“Transportation Charges”).

C. Service Charges in Lieu of Tips. The definition of “sale price” does not include an amount charged or collected in lieu of a gratuity or tip, such as a specifically stated service charge, when the amount charged is to be disbursed by a hotel, motel, restaurant or other eating establishment to its employees as wages. (See § 1752, sub-§ 14(B-5)) An amount or flat percentage charged or collected in lieu of a gratuity is not part of the sale price provided the gratuity is disbursed by the seller to the employee as wages.

D. Maintenance and Service Contracts. Charges for maintenance or service contracts are not part of the sale price as long as the contract is optional to the customer and the charge is separately stated.

6. RETURN OF MERCHANDISE

The definition of “sale price” excludes allowances made on defective merchandise that is returned to the retailer pursuant to warranty. (See § 1752, sub-§ 14(B-2)) It also excludes returned property when a full refund is given.

A. Returns Pursuant to Warranty. When an adjustment of price is made by a retailer on the return of defective merchandise that has been warranted, the adjustment, or allowance, may be deducted on a subsequent sales tax return of the retailer if the original sale was taxable and was so reported by the retailer.

Example: A tire is sold with a 30-month warranty, with an adjustment based upon period of use. Assume that the tire was sold for \$30.00, with an allowance of \$1.00 per month for the period by which the tire fails to meet the warranty. If the tire is returned for failure after 24 months, the allowance would be \$6.00. The purchaser would be entitled to a refund of \$6.00 plus sales tax on this amount. The retailer would deduct \$6.00 on its next sales tax return. Usually such adjustments are made as the result of an express written warranty, as in the case of an automobile tire. The warranty need not be in writing, however, since there are certain warranties that are implied by law.

While an adjustment of sales tax liability may be made when merchandise is returned pursuant to warranty, whether written or not, an adjustment cannot be made where the merchandise is returned to the retailer because the purchaser finds it to be unsatisfactory or unsuitable, not because of an express written warranty or because the merchandise is defective and so fails to meet an unwritten warranty. Unless the **full** purchase price is refunded (see below, under b), no adjustment of sales tax can be made when merchandise is returned because the purchaser finds it to be unsatisfactory.

Example: A customer purchases a snow blower and after using it for a short time finds it is not powerful enough to meet the customer’s particular needs. There is neither failure to meet a written warranty nor any defect in the machine. The customer returns it to the dealer and is allowed 85% of the original purchase price as a refund. There is no adjustment permitted so far as sales tax is concerned.

B. Return of Merchandise and Refund of Full Purchase Price. When merchandise is returned by the customer and the **full** purchase price is refunded, either in cash or by credit toward other purchases, the retailer may deduct the original purchase price of the item on a subsequent sales tax return if the original transaction was taxable and was so reported. (See § 1752, sub-§ 14(B-3)) In such a case, applicable sales tax would also be refunded to the customer.

If, in connection with such returned merchandise, the retailer deducts from the refund a standard service charge (sometimes called a “restocking fee”), the transaction will nevertheless be considered as a refund of the full purchase price if the service charge is separately shown and so identified on the invoice to the customer or in the records of the retailer. The customer would be entitled to a refund of the entire sales tax paid on the original transaction.

Example: A retailer makes a standard service charge of \$1.00 in all cases where merchandise is returned by the customer for refund. The invoice or credit memo to the customer indicates “purchase price refunded \$30.00, less service charge \$1.00 - net \$29.00.” The retailer should treat this as a refund of the full purchase price and also refund the \$1.50 sales tax originally paid on the \$30.00 sale.

However, except for deduction of a standard service charge, in order to qualify for this exclusion from sale price, the retailer must refund the entire purchase price. For example, if an item has been used by the customer and the retailer therefore refunds less than the full purchase price (and the transaction does not involve an express or implied warranty), no adjustment of sales tax is permitted.

7. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all-inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question, and should be directed to the:

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